2021

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2021

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 22

Title 99 (Chapter 1 to 19)

(As Revised 2020)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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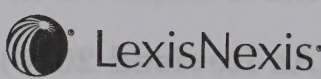

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

There are no new sections added in this supplement.

Tables

The Statutory Tables volume will be published showing disposition of legislative acts through the 2021 Regular Session.

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MISSISSIPPI CODE
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VOLUME TWENTY TWO

TITLE 99.

CRIMINAL PROCEDURE

Chapter 15. Pretrial Proceedings. 99-15-1

CHAPTER 1.

GENERAL PROVISIONS; TIME LIMITATIONS; COSTS

§ 99-1-5. Time limitation on prosecutions.

JUDICIAL DECISIONS

4. Miscellaneous.

Trial court did not err by denying defendant's motion to dismiss because the State commenced his prosecution within the time period provided by this section, as the search warrants and defendant's arrest warrant were executed on July 9, 2015 and a grand jury indicted defendant on July 28, 2016. Defendant's 2019 reindictment was not untimely because it contained charges almost identical to those in the 2016 indictment except for one count's amendment to reflect the specific amount of synthetic cannabinoids seized from defendant's store. Murshid v. State, — So. 3d —, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 20, 2021).

§ 99-1-7. Time limitation on prosecutions; commencement of prosecution.

JUDICIAL DECISIONS

1. In general.

Trial court did not err by denying defendant's motion to dismiss because the State commenced his prosecution within the time period provided by this section, as the search warrants and defendant's arrest warrant were executed on July 9, 2015 and a grand jury indicted defendant on July 28, 2016. Defendant's 2019 reindictment was not untimely because it contained charges almost identical to those in the 2016 indictment except for one count's amendment to reflect the specific amount of synthetic cannabinoids seized from defendant's store. Murshid v. State, — So. 3d —, 2021 Miss. App. LEXIS 167 (Miss. Ct. App. Apr. 20, 2021).

Trial court properly dismissed a father's malicious-prosecution claim because none of the evidence he submitted amounted to the commencement of a criminal proceeding; while the trial court used a statutory definition to define the initiation of a criminal proceeding, there was no error because such finding was supported by caselaw. Wilbourn v. Wilbourn, 314 So. 3d 104, 2021 Miss. LEXIS 16 (Miss. 2021).

CHAPTER 7.

INDICTMENT

§ 99-7-37. Murder and manslaughter.

JUDICIAL DECISIONS

4. Sufficiency of indictment.

Because the indictment tracked the language of the manslaughter statute and the maltreatment statute, it was sufficient to put defendant on notice of the charges against her; the indictment's use of the common term "misdemeanor manslaughter" did not render it defective, and the indictment specifically identified not only the underlying misdemeanor (maltreatment) but also the type of maltreatment (failure to provide sufficient medical attention). Brannan v. State, — So. 3d —, 2020 Miss. App. LEXIS 593 (Miss. Ct. App. Oct. 20, 2020), cert. denied, — So. 3d —, 2021 Miss. LEXIS 172 (Miss. 2021).

CHAPTER 11.

JURISDICTION AND VENUE

§ 99-11-3. Local jurisdiction; venue; venue regarding indictments returned by state grand jury [Subsection (2) repealed effective July 1, 2024].

JUDICIAL DECISIONS

2. Proof of venue, generally.

Trial court did not err in submitting the issue of venue to the jury. Because there was conflicting testimony regarding the identity of the county in which an assault occurred, ambiguity existed, making it appropriate for the jury to determine venue. Kidder v. State, — So. 3d —, 2021 Miss. App. LEXIS 170 (Miss. Ct. App. Apr. 20, 2021).

CHAPTER 13.

INSANITY PROCEEDINGS

§ 99-13-11. Mental examination of person charged with felony; cost.

JUDICIAL DECISIONS

2. Grounds for appointment of examiner.

Although the trial court initially found that defendant was incompetent to stand trial, following a second competency hearing, the court found that defendant was competent to stand trial after receiving treatment. Furthermore, after defendant withdrew an insanity defense, there was no evidence or reasonable grounds that the court should have sua sponte ordered a competency hearing on the first day of trial based on defendant's demeanor at trial as defendant actively participated in the proceedings and engaged in discussions with defendant's counsel. Dorsey v. State, 310 So. 3d 1238, 2021 Miss. App. LEXIS 55 (Miss. Ct. App. 2021).

CHAPTER 15.

PRETRIAL PROCEEDINGS

Pretrial Intervention Program. 99-15-101

PRETRIAL INTERVENTION PROGRAM

Sec.
99-15-107. Ineligibility for intervention.

§ 99-15-107. Ineligibility for intervention.

A person shall not be eligible for the intervention program provided by Sections 99-15-101 through 99-15-127 if the person has been charged with:

(a) Any crime of violence listed in Section 97-3-2;

(b) Any offense pertaining to trafficking in a controlled substance, as provided in Section 41-29-139(f); or

(c) Any crime of fraud or embezzlement committed in a public office pursuant to Section 97-7-11 or 97-11-31, amounting to or exceeding Ten Thousand Dollars ($10,000.00).

HISTORY: Laws, 1983, ch. 445, § 4; reenacted, Laws, 1987, ch. 329, § 4; Laws, 2014, ch. 457, § 13, eff from and after July 1, 2014; Laws, 2021, ch. 327, § 1, eff from and after July 1, 2021.

Amendment Notes — The 2021 amendment rewrote the section, which read: "A person shall not be considered for intervention if he or she has been charged with any crime of violence pursuant to Section 97-3-2. A person shall not be eligible for acceptance into the intervention program provided by Sections 99-15-101 through 99-15-127 if such person has been charged with an offense pertaining to trafficking in a controlled substance, as provided in Section 41-29-139(f)."

CHAPTER 17.

TRIAL

§ 99-17-1. Indictments to be tried within 270 days of arraignment.

JUDICIAL DECISIONS

17. Arraignment.

Defendant's statutory right to a speedy trial was not violated because his trial began 253 days after he was arraigned. Golden v. State, — So. 3d —, 2021 Miss. App. LEXIS 153 (Miss. Ct. App. Apr. 13, 2021).

§ 99-17-9. Trial in the absence of accused.

JUDICIAL DECISIONS

5. Particular circumstances.

Trial court did not abuse its discretion by denying defendant's motion for a continuance and proceeding in absentia because the record was clear that defendant was aware of he trial date, made preparations for trial, and failed to explain her absence to her attorney of the trial court. Benthall v. State, 311 So. 3d 697, 2021 Miss. App. LEXIS 69 (Miss. Ct. App. 2021).

CHAPTER 19.

JUDGMENT, SENTENCE, AND EXECUTION

SENTENCING OF HABITUAL CRIMINALS

§ 99-19-81. Sentencing of habitual criminals to maximum term of imprisonment.

JUDICIAL DECISIONS

ANALYSIS

3. Sufficiency of prior sentences, generally.
5. —Separate incidents.
6. Proportionality.
18. Sentence not excessive.
20. Habitual offender sentences.

3. Sufficiency of prior sentences, generally.

5. —Separate incidents.

Trial courts' decision to sentence defendant as an habitual offender was supported by certified exhibits showing that he had pled guilty and was convicted of one prior felony in Texas and had been found guilty of a second felony conviction in Georgia. The State's evidence further demonstrated that the two prior felony convictions had arisen from separate incidences and that defendant had been sentenced to serve at least one year for each conviction in a state or federal penal institution. Harris v. State, 311 So. 3d 638, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 832, 2021 Miss. LEXIS 32 (Miss. 2021).

6. Proportionality.

Because the sentences imposed by the circuit court, a maximum of 10 years without eligibility for parole, fell within the applicable statutory sentencing limits, there was no inference of gross disproportionality. Harris v. State, 311 So. 3d 638, 2020 Miss. App. LEXIS 499 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 832, 2021 Miss. LEXIS 32 (Miss. 2021).

18. Sentence not excessive.

Defendant's concurrent and consecutive maximum enhanced sentences for possession of schedule I and II controlled substances with intent to sell, conspiracy to sell a schedule I controlled substance, and possession of a firearm by a felon were not grossly excessive and disproportionate to the crimes because defendant was adjudicated a non-violent habitual offender due to defendant's prior conviction for possession of marijuana and the circuit court did not abuse its discretion by applying the subsequent drug offender enhancement. Williams v. State, — So. 3d —, 2021 Miss. App. LEXIS 194 (Miss. Ct. App. May 4, 2021).

20. Habitual offender sentences.

Court of appeals addressed the merits of appellant's claim even though his post-conviction relief motion was not filed

within the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act because appellant contended that the State's failure to prove beyond a reasonable doubt that his prior convictions arose from separate incidents at different times subjected him to an illegal sentence as a habitual offender. Jones v. State, 304 So. 3d 702, 2020 Miss. App. LEXIS 569 (Miss. Ct. App. 2020).

§ 99-19-83. Sentencing of habitual criminals to life imprisonment.

JUDICIAL DECISIONS

ANALYSIS

12. Proof of prior conviction; in Mississippi.
16. Particular circumstances.

12. Proof of prior conviction; in Mississippi.

State properly established that defendant was a habitual offender under the statute because it provided defendant's conviction records, which showed that he had been convicted of two prior felonies, one being a crime of violence; the records also showed that defendant had been sentenced to, and served, over one year for each conviction. Pope v. State, — So. 3d —, 2021 Miss. App. LEXIS 275 (Miss. Ct. App. June 29, 2021).

16. Particular circumstances.

In a case in which defendant was found guilty of possession of marijuana in an amount greater than 30 grams but less than 250 grams, the circuit court justifiably found defendant to be a violent habitual offender under Miss. Code Ann. § 99-19-83 and sentenced him to life imprisonment without eligibility for probation or parole. Because defendant failed to prove the threshold requirement of gross disproportionality, and because his habitual-offender sentence fell within the statutory guidelines, his sentence constituted a constitutionally permissible punishment for his most recent crime. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 206 (Miss. Ct. App. May 11, 2021).